

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 385 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.

2. To be referred to the Reporter or not? No. :

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? : NO
No.

NAVINCHANDRA NANALAL KIKLAWALA

Versus

ASGARBHAI MUSABHAI NALAWALA

Appearance:

MR KV SHELAT for Petitioner
NOTICE SERVED for Respondent No. 1
MR AKSHAY H MEHTA for Respondent No. 2, 7, 8, 9,10,11,
12,13
UNSERVED-EXPIRED (N) for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 05/10/2000

ORAL JUDGEMENT

One Navinbhai Nanalal Kikalawala filed Regular
Civil suit No.252/1988 in the trial Court against
Asgarbhai Musabhai Nalawala, Kalu Madiya Bhil, Puniya
Nariya Bhil, Vallabh Singalabhai Bhil, and Vallabh Madiya
Bhil on the allegations that the defendant no. 1

Asgarbhais Musabhai - main tenant has sublet the suit premises to the defendants no. 2 to 5 illegally and the suit was filed for possession of the suit premises. The trial Court vide its judgment and decree dated 31-3-1995 held that Asgarbhais Musabhai illegally sublet the suit premises to the defendants no. 2 to 5. Asgarbhais Musabhai did not prefer any appeal against the judgment and decree of the trial Court. However, the defendants no. 2 to 5 filed Civil Appeal No. 3/96 before the District Court against the judgment and decree on 31-3-1995. The said appeal was dismissed by the District Court. Two Civil Revision Applications No. 1364/96 and 1738/96 were filed by the subtenants before this Court against dismissal of the appeal filed by them.

2. This Court dismissed the said both Revision Application vide order dated 11-8-1998 against which the subtenants filed Special Leave Petitions before the Apex Court and the Apex Court dismissed the said Special Leave Petitions summarily.

3. During the pendency of the aforesaid proceedings. The petitioner being landlord filed Execution Application before the trial Court. In the Execution Proceedings the possession warrant was also issued against which Regular Civil Appeal No. 37/96 was filed by the brothers of the subtenants; Kalu Madiya and Vallabh Madiya before the District Court along with the application exh. 5. The appellate Court allowed the application exh. 5 filed in the appeal by the order dated 9-12-1996. Against that order, this Revision Application has been preferred.

4. The contention of the learned advocate is that the decree passed by the trial Court has been confirmed not only by the District Court but also by this Court as well as the Apex Court. The Revision Applications filed by the subtenant before this Court has already been dismissed and against that dismissal those revision applications Special Leave Applications were filed before the Supreme Court and the same were also dismissed by the Apex Court.

5. It is urged that the Court below has committed error in entertaining the appeal on behalf of the third party who was not a party in the suit proceedings. That continued from the trial Court upto the Supreme Court and they have never claimed to be in possession of the suit premises from the initial stage to the stage of the Supreme Court.

6. Now, they are claiming to be in possession though

they were contesting the proceedings from the initial stage. The appellate Court has committed manifest error on the face of the record in entertaining the appeal itself.

7. Second contention of the learned counsel for the petitioner is that the appeal was barred by limitation and the lower court has committed an error in entertaining the appeal only on the ground that the appeal was filed by the third party and he was not a party in the suit proceedings. It is observed by the Court concerned in the impugned order that copy of the judgment and order was received by the appellant from the persons who were found in illegal occupation of the land in dispute. It appears that the appeal has been preferred at the instance of the subtenants in order to frustrate the orders passed by the Courts.

8. I have carefully considered the contentions of the learned counsel for the parties and perused the material on record including the impugned order.

9. The list has been revision. Nobody appears on behalf of the respondents

10. It appears that the appeal has been filed by Bhalubhai Madiyabhai Bhil, Kali wd/o Madiya Bhil, Limbudi wd/o Singlabhai Bhil, Nathubhai Singlabhai Bhil, Kalubhai Singlabhai Bhil, Kantibhai Singlebhai Bhil, Bhalubhai Singlabhai Bhil and Lallubhai Singlabhai Bhil, before appellate Court.

11. The proceedings have already been concluded wherein it has been held that the main tenant Asgarbhai Musabhai has illegally sublet the suit premises to the defendants no. 2 to 5. The appellants before the appellate Court were not the tenants nor it has been held by the Courts below that the property in dispute was in possession of other persons. Even if it is presumed that the appellants were in joint possession of the suit premises and the defendants contested the suit proceedings from the stage of the trial Court upto the Apex Court, the appellant cannot be allowed to resist the warrant for possession of the suit premises pursuant to the judgment and decree of the trial Court affirmed by this Court as well as this Court and the Apex Court. They cannot agitate that they were not impleaded as party in the suit proceedings. Hence, the judgement and decree is not binding to them. Even if it is assumed for the sake of argument that the appeal is maintainable and entertainable, the Appellate court is not justified in

passing the status-quo order as the appellate authority because the judgment and decree passed by the trial Court has been confirmed upto the Supreme Court and at the most the appellate Court could have decided the appeal on merits and he ought not to have stayed the execution proceedings of the judgment and decree only on the ground that they have not been impleaded as party in the suit premises. Actually, they were not subtenants and the persons held to be in illegal occupation of the suit premises. Hence, the possession of these persons will also be deemed to be illegal as their possession has also not been held by any Court of law as legal.

12. In the facts and circumstances of this case, the appellate Court has committed an error in allowing the application exh. 5 staying the execution of the judgment and decree passed by the trial Court. Thus, the present revision application deserves to be allowed and the impugned order passed by the appellate Court is hereby quashed and set aside and the appellate Court is directed to decide the appeal at the earliest as the appeal is pending since 1996. The appeal is filed by a third party, the Court is required to pass an order u/s 5 of the Limitation Act condoning the delay and unless such order condoning the delay is passed the appeal cannot be entertained. The appeal filed by the third party cannot be entertained automatically.